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LRB094 15270 WGH 55767 a

1 AMENDMENT TO HOUSE BILL 5002

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5002 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Employee Classification Act.

6 Section 3. Purpose. This Act is intended to address the  
7 practice of misclassifying employees as independent  
8 contractors.

9 Section 5. Definitions. As used in this Act:

10 "Contractor" means any person who, in any capacity other  
11 than as the employee of another for wages as the sole  
12 compensation, undertakes to construct, alter, repair, move,  
13 wreck, or demolish any fixture or structure. "Contractor"  
14 includes a general contractor and a subcontractor, but does not  
15 include a person who furnishes only materials or supplies.

16 "Department" means the Department of Labor.

17 "Director" means the Director of Labor.

18 "Employer" means any contractor that employs individuals  
19 deemed employees under Section 10 of this Act; however,  
20 "employer" does not include (i) the State of Illinois or its  
21 officers, agencies, or political subdivisions or (ii) the  
22 federal government.

23 "Entity" means any contractor for which a person is

1 performing any service and is not classified as an employee  
2 under Section 10 of this Act; however, "entity" does not  
3 include (i) the State of Illinois or its officers, agencies, or  
4 political subdivisions or (ii) the federal government.

5 Section 10. Applicability; status of individuals  
6 performing service. For the purposes of this Act, an individual  
7 performing any service for a contractor is deemed to be an  
8 employee unless it is shown that:

9 (1) the individual has been and will continue to be  
10 free from control or direction over the performance of the  
11 service, both under his or her contract of service and in  
12 fact;

13 (2) the service is either outside the usual course of  
14 the business for which the service is performed or the  
15 service is performed outside of all the places of business  
16 of the enterprise for which the service is performed; and

17 (3) the individual is engaged in an independently  
18 established trade, occupation, profession, or business.

19 Section 15. Notice.

20 (a) The Department shall post a summary of the requirements  
21 of this Act in English, Spanish, and Polish on its web site and  
22 on bulletin boards in each of its offices.

23 (b) An employer or entity for whom one or more persons  
24 classified as independent contractors are performing service  
25 shall post and keep posted, in conspicuous places on each job  
26 site where those persons work and in each of its offices, a  
27 notice in English, Spanish, and Polish, prepared by the  
28 Department, summarizing the requirements of this Act. The  
29 Department shall furnish copies of summaries to employers and  
30 entities upon request without charge.

31 Section 20. Failure to properly designate or classify

1 persons performing services as employees.

2 (a) Except as provided in subsection (b), it is a violation  
3 of this Act for an employer or entity not to designate an  
4 individual as an employee under Section 10 of this Act unless  
5 the employer or entity satisfies the provisions of Section 10.

6 (b) Subsection (a) does not apply to any designation of an  
7 individual by an employer or entity in accordance with the  
8 requirements of any other law, rule, or regulation.

9 Section 25. Enforcement. It shall be the duty of the  
10 Department to enforce the provisions of this Act. The  
11 Department shall have the power to conduct investigations in  
12 connection with the administration and enforcement of this Act  
13 and any investigator with the Department shall be authorized to  
14 visit and inspect, at all reasonable times, any places covered  
15 by this Act and shall be authorized to inspect, at all  
16 reasonable times, documents related to the determination of  
17 whether a person is an employee under Section 10 of this Act.  
18 The Department shall conduct hearings in accordance with the  
19 Illinois Administrative Procedure Act upon written complaint  
20 by an investigator of the Department or any interested person  
21 of a violation of the Act. After the hearing, if supported by  
22 the evidence, the Department may (i) issue and cause to be  
23 served on any party an order to cease and desist from further  
24 violation of the Act, (ii) take affirmative or other action as  
25 deemed reasonable to eliminate the effect of the violation, and  
26 (iii) determine the amount of any civil penalty allowed by the  
27 Act. The Director of Labor or his or her representative may  
28 compel, by subpoena, the attendance and testimony of witnesses  
29 and the production of books, payrolls, records, papers, and  
30 other evidence in any investigation or hearing and may  
31 administer oaths to witnesses.

32 Section 30. Review under Administrative Review Law. Any

1 party to a proceeding under this Act may apply for and obtain  
2 judicial review of an order of the Department entered under  
3 this Act in accordance with the provisions of the  
4 Administrative Review Law, and the Department in proceedings  
5 under the Act may obtain an order from the court for the  
6 enforcement of its order.

7 Section 35. Contempt. Whenever it appears that any employer  
8 or entity has violated a valid order of the Department issued  
9 under this Act, the Director of Labor may commence an action  
10 and obtain from the court an order commanding the employer or  
11 entity to obey the order of the Department or be adjudged  
12 guilty of contempt of court and punished accordingly.

13 Section 40. Penalties. An employer or entity that violates  
14 any of the provisions of this Act or any rule adopted under  
15 this Act shall be subject to a civil penalty not to exceed  
16 \$1,500 for each violation found in the first audit by the  
17 Department. Following a first audit, an employer or entity  
18 shall be subject to a civil penalty not to exceed \$2,500 for  
19 each repeat violation found by the Department within 5 years.  
20 For purposes of this Section, each violation of this Act for  
21 each person and for each day the violation continues shall  
22 constitute a separate and distinct violation. In determining  
23 the amount of a penalty, the Director shall consider the  
24 appropriateness of the penalty to the employer or entity  
25 charged, upon the determination of the gravity of the  
26 violations. For any second or subsequent violation determined  
27 by the Department which is within 5 years of an earlier  
28 violation, the Department shall add the employer or entity's  
29 name to a list to be posted on the Department's website. Upon  
30 such determination the Department shall notify the violating  
31 employer or entity. Such employer or entity shall then have 10  
32 working days to request a hearing by the Department on the

1 alleged violations. Failure to respond within the 10 working  
2 day period shall result in automatic and immediate placement  
3 and publication on the list. If the employer or entity requests  
4 a hearing within the 10 working day period, the Director shall  
5 set a hearing on the alleged violations. Such hearing shall  
6 take place no later than 45 calendar days after the receipt by  
7 the Department of Labor of the request for a hearing. The  
8 Department of Labor is empowered to promulgate, adopt, amend,  
9 and rescind rules to govern the hearing procedure. No contract  
10 shall be awarded to a employer or entity appearing on the list  
11 until 4 years have elapsed from the date of the last violation.  
12 The amount of the penalty, when finally determined, may be  
13 recovered in a civil action filed in any circuit court by the  
14 Director of Labor or a person aggrieved by a violation of this  
15 Act or any rule adopted under this Act. In any civil action  
16 brought by an aggrieved person pursuant to this Section, the  
17 circuit court shall award the aggrieved person 10% of the  
18 amount recovered. In such case the remaining amount recovered  
19 shall be submitted to the Director of Labor.

20 Section 45. Willful violations.

21 (a) Whoever willfully violates any of the provisions of  
22 this Act or any rule adopted under this Act or whoever  
23 obstructs the Director of Labor, or his or her representatives,  
24 or any other person authorized to inspect places of employment  
25 under this Act shall be liable for penalties up to double the  
26 statutory amount.

27 (b) Whoever willfully violates any of the provisions of  
28 this Act or any rule adopted under this Act shall be liable to  
29 the employee for punitive damages in an amount equal to the  
30 penalties assessed in subsection (a) of this Section.

31 (c) The Director may promulgate rules for the collection of  
32 these penalties. The penalty shall be imposed in cases in which  
33 an employer or entity's conduct is proven by a preponderance of

1 the evidence to be willful. The penalty may be recovered in a  
2 civil action brought by the Director of Labor in any circuit  
3 court. In any such action, the Director of Labor shall be  
4 represented by the Attorney General.

5 Section 50. Employee Classification Fund. All moneys  
6 received by the Department as fees and civil penalties under  
7 this Act shall be deposited into the Employee Classification  
8 Fund and shall be used, subject to appropriation by the General  
9 Assembly, by the Department for administration, investigation,  
10 and other expenses incurred in carrying out its powers and  
11 duties under this Act. The Department shall hire as many  
12 investigators as may be necessary to carry out the purposes of  
13 this Act. Any moneys in the Fund at the end of a fiscal year in  
14 excess of those moneys necessary for the Department to carry  
15 out its powers and duties under this Act shall be available to  
16 the Department for the next fiscal year for any of the  
17 Department's duties.

18 Section 55. Retaliation.

19 (a) It is a violation of this Act for an employer or  
20 entity, or any agent of an employer or entity, to retaliate  
21 through discharge or in any other manner against any person for  
22 exercising any rights granted under this Act. Such retaliation  
23 shall subject an employer or entity to civil penalties pursuant  
24 to this Act or a private cause of action.

25 (b) It is a violation of this Act for an employer or entity  
26 to retaliate against a person for:

27 (1) making a complaint to an employer or entity, to a  
28 co-worker, to a community organization, before a public  
29 hearing, or to a State or federal agency that rights  
30 guaranteed under this Act have been violated;

31 (2) causing to be instituted any proceeding under or  
32 related to this Act; or

1           (3) testifying or preparing to testify in an  
2 investigation or proceeding under this Act.

3           Section 60. Private right of action.

4           (a) A person aggrieved by a violation of this Act or any  
5 rule adopted under this Act by an employer or entity may file  
6 suit in circuit court, in the county where the alleged offense  
7 occurred or where any person who is party to the action  
8 resides, without regard to exhaustion of any alternative  
9 administrative remedies provided in this Act. Actions may be  
10 brought by one or more persons for and on behalf of themselves  
11 and other persons similarly situated. A person whose rights  
12 have been violated under this Act by an employer or entity is  
13 entitled to collect:

14           (1) the amount of any wages, salary, employment  
15 benefits, or other compensation denied or lost to the  
16 person by reason of the violation, plus an equal amount in  
17 liquidated damages;

18           (2) compensatory damages and an amount up to \$500 for  
19 each violation of this Act or any rule adopted under this  
20 Act;

21           (3) in the case of unlawful retaliation, all legal or  
22 equitable relief as may be appropriate; and

23           (4) attorney's fees and costs.

24           (b) The right of an aggrieved person to bring an action  
25 under this Section terminates upon the passing of 3 years from  
26 the final date of service to the employer or entity. This  
27 limitations period is tolled if an employer or entity has  
28 deterred a person's exercise of rights under this Act by  
29 contacting or threatening to contact law enforcement agencies.

30           Section 65. Rulemaking. In addition to any rulemaking  
31 required by any other provision of this Act, the Department may  
32 adopt reasonable rules to implement and administer this Act.

1 For purposes of this Act, the General Assembly finds that the  
2 adoption of rules to implement this Act is deemed an emergency  
3 and necessary for the public interest and welfare.

4 Section 70. No waivers.

5 (a) There shall be no waiver of any provision of this Act.

6 (b) It is a Class C misdemeanor for an employer to attempt  
7 to induce any individual to waive any provision of this Act.

8 Section 75. Cooperation. The Department of Labor, the  
9 Department of Employment Security, the Department of Revenue,  
10 and the Illinois Workers' Compensation Commission shall  
11 cooperate under this Act by sharing information concerning any  
12 suspected misclassification by an employer of one or more of  
13 its employees as independent contractors.

14 Section 901. The Department of Employment Security Law of  
15 the Civil Administrative Code of Illinois is amended by adding  
16 Section 1005-160 as follows:

17 (20 ILCS 1005/1005-160 new)

18 Sec. 1005-160. Misclassification of employees as  
19 independent contractors. The Department of Labor, the  
20 Department of Employment Security, the Department of Revenue,  
21 and the Illinois Workers' Compensation Commission shall  
22 cooperate under the Employee Classification Act by sharing  
23 information concerning any suspected misclassification by an  
24 employer or entity, as defined in the Employee Classification  
25 Act, of one or more employees as independent contractors.

26 Section 905. The Department of Labor Law of the Civil  
27 Administrative Code of Illinois is amended by adding Section  
28 1505-125 as follows:



1 (20 ILCS 1505/1505-125 new)

2 Sec. 1505-125. Misclassification of employees as  
3 independent contractors. The Department of Labor, the  
4 Department of Employment Security, the Department of Revenue,  
5 and the Illinois Workers' Compensation Commission shall  
6 cooperate under the Employee Classification Act by sharing  
7 information concerning any suspected misclassification by an  
8 employer or entity, as defined in the Employee Classification  
9 Act, of one or more employees as independent contractors.

10 Section 910. The Department of Revenue Law of the Civil  
11 Administrative Code of Illinois is amended by adding Section  
12 2505-750 as follows:

13 (20 ILCS 2505/2505-750 new)

14 Sec. 2505-750. Misclassification of employees as  
15 independent contractors. The Department of Labor, the  
16 Department of Employment Security, the Department of Revenue,  
17 and the Illinois Workers' Compensation Commission shall  
18 cooperate under the Employee Classification Act by sharing  
19 information concerning any suspected misclassification by an  
20 employer or entity, as defined in the Employee Classification  
21 Act, of one or more employees as independent contractors.

22 Section 915. The State Finance Act is amended by adding  
23 Section 5.663 as follows:

24 (30 ILCS 105/5.663 new)

25 Sec. 5.663. The Employee Classification Fund.

26 Section 920. The Illinois Procurement Code is amended by  
27 changing Section 50-70 as follows:

28 (30 ILCS 500/50-70)

1           Sec. 50-70. Additional provisions. This Code is subject to  
2 applicable provisions of the following Acts:

- 3           (1) Article 33E of the Criminal Code of 1961;  
4           (2) the Illinois Human Rights Act;  
5           (3) the Discriminatory Club Act;  
6           (4) the Illinois Governmental Ethics Act;  
7           (5) the State Prompt Payment Act;  
8           (6) the Public Officer Prohibited Activities Act; ~~and~~  
9           (7) the Drug Free Workplace Act; and  
10           (8) the Employee Classification Act.

11           (Source: P.A. 90-572, eff. 2-6-98.)

12           Section 925. The Workers' Compensation Act is amended by  
13 adding Section 26.1 as follows:

14           (820 ILCS 305/26.1 new)

15           Sec. 26.1. Misclassification of employees as independent  
16 contractors. The Department of Labor, the Department of  
17 Employment Security, the Department of Revenue, and the  
18 Illinois Workers' Compensation Commission shall cooperate  
19 under the Employee Classification Act by sharing information  
20 concerning any suspected misclassification by an employer or  
21 entity, as defined in the Employee Classification Act, of one  
22 or more employees as independent contractors.

23           Section 990. Severability. The provisions of this Act are  
24 severable under Section 1.31 of the Statute on Statutes.

25           Section 999. Effective date. This Act takes effect July 1,  
26 2006.".